



NEWPORT BEACH

Harbor Commission Staff Report

Agenda Item No. 5
July 21, 2014

TO: HARBOR COMMISSION

FROM: Public Works Department
Chris Miller, Harbor Resources Manager
949-644-3043, cmiller@newportbeachca.gov

TITLE: Review of Water Propelled Vessels – Ad Hoc Committee Formation

ABSTRACT:

On June 24, 2014, the City Council adopted an Urgency Ordinance establishing a temporary prohibition on the issuance of Marine Activities Permits to businesses engaged in the operation of vessels propelled by water above the surface of Newport Harbor. In addition, the Council also directed the Harbor Commission to form an ad hoc committee to evaluate the issue and to return to the Council within six months with a recommended path forward on managing this emerging activity.

RECOMMENDATION:

1. Establish an ad hoc committee to evaluate the operation of vessels propelled by water above the surface of Newport Harbor, and return to the City Council with a recommended path forward on managing this emerging activity.

FUNDING REQUIREMENTS:

There is no fiscal impact related to this item.

DISCUSSION:

Please see the attached June 24, 2014 City Council staff report for details on the operation of vessels propelled by water above the surface of Newport Harbor.

The Harbor Commission has been directed by the Council to form an ad hoc committee to evaluate this issue, and to return to the Council within six months with a recommended path forward.

ENVIRONMENTAL REVIEW:

Staff recommends the Harbor Commission find this action is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines,

California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the Harbor Commission considers the item). +

Submitted by:



Chris Miller

ATTACHMENTS:

Attachment A – June 24, 2014 City Council Staff Report



June 24, 2014
Agenda Item No. 15.

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: David A. Webb, Public Works Director- (949) 644-3330,
dawebb@newportbeachca.gov

PREPARED BY: Chris Miller, Harbor Resources Manager

PHONE: 949-644-3043

TITLE: An Urgency Ordinance of the City Council of the City of Newport Beach, California Establishing a Temporary Prohibition on the Issuance of Marine Activities Permits to Businesses Engaged in the Operation of Vessels Propelled by Water Above the Surface of Newport Harbor

ABSTRACT:

City staff has recently received a number of inquiries and applications from persons or businesses that desire to establish water propulsion vessel businesses in Newport Harbor. Given the apparent growing popularity of this use, the City anticipates it will receive additional applications and inquiries in the future. This ordinance is urgent because the City must prohibit the issuance of new Marine Activities Permits until the staff, Harbor Commission and City Council have an opportunity to study and analyze how best to manage water propulsion vessel operations to ensure they are safe and compatible with existing and future uses in Newport Harbor.

RECOMMENDATION:

- a) Adopt Urgency Ordinance No. 2014-11, *An Urgency Ordinance of the City Council of the City of Newport Beach Establishing a Temporary Prohibition on the Issuance of Marine Activities Permits to Persons or Business Engaged in the Operation of Vessels Propelled by Water Above the Surface of Newport Harbor*. This urgency ordinance shall remain in effect for a period of one (1) year, unless earlier repealed or extended by the City Council. This urgency ordinance is adopted pursuant to City Charter Sections 412 and 416(d), and shall take effect immediately upon its passage by a vote of at least five (5) City Council Members; and
- b) Direct the Harbor Commission to form an ad hoc committee to evaluate the operation of vessels propelled by water above the surface of Newport Harbor, and

return to the City Council with a recommended path forward on managing this emerging activity.

FUNDING REQUIREMENTS:

No Fiscal Impact.

DISCUSSION:

Water propulsion vessels operate above the surface of the water and are commonly referred to as Jetlev, Aquafllyer, Aquaboard, etc. Typically, the user wears a shoulder pack which is connected to a personal watercraft type vessel. This modified vessel sucks in water up to the user via a long tube where the water is then forced down at a high velocity, therefore creating lift to raise the user above the water surface. There are other water propulsion operations that involve boards that the operator stands on for a similar experience.

Newport Harbor currently has one commercial person or business operating a water propulsion vessel operation out of the Rhine Channel via an approved Marine Activities Permit. City staff receives complaints from residents and boaters living and recreating around Newport Harbor regarding noise, exhaust, wake and speed violations relative to this activity.

The water propulsion vessel business is relatively new, and there is a lack of information regarding their safety and operational characteristics. To ensure the health, safety and welfare of the residents and visitors of Newport Harbor, City staff has restricted the current water propulsion operations to the main channel areas.

The proliferation of new water propulsion vessel businesses within Newport Harbor presents a current and immediate threat to the public peace, health and safety in that such operations are out of character with the design and residential character of Newport Harbor, and there is a distinct lack of available space to accommodate multiple water propulsion vessels in the channels. Given the unique operational characteristics of water propulsion vessels (e.g., separate vessels for power and for holding the user as well as a third vessel for staging, staff and loading purposes), they have the potential to impact access to navigational channels and public rights-of-way and endanger water propulsion vessel operators and other persons using Newport Harbor as well as marine life.

City staff has received inquiries and applications from other persons or businesses that desire to establish water propulsion vessel businesses in Newport Harbor, and given the apparent growing popularity of this activity, the

City anticipates it will receive additional applications and inquiries in the future. This ordinance is urgent because the City must prohibit the issuance of new Marine Activities Permits until staff, the Harbor Commission and the City Council have an opportunity to study and analyze how best to manage water propulsion vessel operations to ensure they are safe and compatible with existing and future uses in Newport Harbor.

The purpose of this urgency ordinance is for the City not to issue any new Marine Activities Permits to persons or business that operate water propulsion vessels during the time this urgency ordinance is in effect which is one (1) year unless earlier repealed or extended by the City Council. Other Marine Activities Permit applications for non-related businesses shall not be affected by this urgency ordinance.

ENVIRONMENTAL REVIEW:

The City Council finds the approval of this urgency ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. Alternatively, the City Council finds the approval of this urgency ordinance is not a project under CEQA Regulation Section 15061(b)(3) because it has no potential for causing a significant effect on the environment.

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENTS:**Description**

[Attachment A - Urgency Ordinance](#)

[Attachment B - Example of Vessels Propelled by Water](#)

ORDINANCE NO. 2014-11

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA ESTABLISHING A TEMPORARY PROHIBITION ON THE ISSUANCE OF MARINE ACTIVITIES PERMITS TO PERSONS AND BUSINESSES ENGAGED IN THE OPERATION OF VESSELS PROPELLED BY WATER ABOVE THE SURFACE OF NEWPORT HARBOR

WHEREAS, Section 200 of the Charter of the City of Newport Beach ("City") vests the City Council with the authority to make and enforce all laws, rules and regulations with respect to municipal affairs subject only to the restrictions and limitations contained in the Charter and the State Constitutions, and the power to exercise, or act pursuant to any and all rights, powers, and privileges, or procedures granted or prescribed by any law of the State of California;

WHEREAS, Section 412 of the City Charter provides for the adoption as an emergency measure an urgency ordinance to preserve the public peace, health or safety by a vote of at least five (5) City Councilmembers;

WHEREAS, City Charter Section 416(d) allows an urgency ordinance to take effect immediately;

WHEREAS, Newport Harbor is one of the largest yacht harbors in the United States and its waters and shoreline support a wide variety of commercial, recreational and residential uses, and scenic and biological resources; and

WHEREAS, the City's Harbor Resources Department has received inquiries and Marine Activities Permit applications from persons and businesses desiring to establish water propulsion vessel operations within Newport Harbor.

NOW THEREFORE, the City Council of the City of Newport Beach ordains as follows:

Section 1: The City Council hereby incorporates the Recitals provided above into this urgency ordinance and finds, determines and declares that this urgency ordinance adopted pursuant to City Charter Sections 412 and 416(d) is necessary because:

- A. Newport Harbor currently has one commercial business operating a water propulsion vessel business out of the Rhine Channel. Water propulsion vessels operate above the surface of the water and are commonly referred to

as Jetlev, Aquafllyer, Aquaboard, *etc.* The vessels operate by sucking water up through a hose with the use of a modified jet ski and then redirecting the water at a high velocity back towards the ground, which provides lift to raise a user above the surface of the water.

- B. City staff has received complaints from residents living around Newport Harbor regarding noise, exhaust, wake and speed violations related to water propulsion vessels.
- C. On March 14, 2014, a man was transported to the hospital with injuries to his head when he lost control of his water propulsion vessel in Newport Harbor and collided with a part of the vessel that is used to provide power for lift.
- D. The water propulsion vessel business is relatively new and there is a lack of information regarding their safety and operational characteristics. To ensure the health, safety and welfare of residents and visitors in Newport Harbor, City staff has restricted the current water propulsion vessel operations to the channel areas.
- E. The proliferation of new water propulsion vessel businesses within Newport Harbor presents a current and immediate threat to the public peace, health and safety in that such operations are out of character with the design and residential character of Newport Harbor and there is a distinct lack of available space to accommodate multiple water propulsion vessels in the channels. Given the unique operational characteristics of water propulsion vessels (*e.g.*, separate vessels for power and for holding the user as well as a third vessel for staging, staff and loading purposes) they have the potential to impact access to navigational channels and could endanger users as well as other persons within and around Newport Harbor.
- F. City staff has received inquiries and applications from other persons and businesses that desire to establish water propulsion vessel businesses in Newport Harbor and, given the growing popularity of this use, the City anticipates it will receive additional applications and inquiries in the future. This ordinance is urgent because the City must prohibit the issuance of new Marine Activities Permits until the City Council, Harbor Commission and staff have an opportunity to study and analyze how best to manage water propulsion vessel operations to ensure they are safe and compatible with existing and future uses in Newport Harbor.

Section 2: The City shall not issue or approve any new Marine Activities Permits for businesses that operate water propulsion vessels during the time this urgency ordinance is in effect. For purposes of this urgency ordinance, the term “water propulsion vessel(s)” means a vessel that is powered or maneuvered by means of mechanical water propulsion above the surface of the water.

Section 3: Any applicant for a Marine Activities Permit may elect to have City staff continue to accept and process applications during this temporary prohibition. This temporary prohibition is not intended to affect the acceptance and/or processing of permit applications described in Section 3; rather, it is intended to prohibit only the issuance of a Marine Activities Permit to persons or businesses that operate water propulsion vessels. City staff shall continue to accept applications received after the effective date of this urgency ordinance. At an applicant’s written request, the City shall continue to process an application during term of this urgency ordinance; however, any future regulation of such business and the permitting thereof adopted by the City Council shall apply to such an application. Any time limits or mandatory approval time frames relative to the processing and/or action upon permit applications for any person or business subject to this urgency ordinance are tolled during the term of this urgency ordinance.

Section 4: This urgency ordinance is adopted pursuant to City Charter Sections 412 and 416(d), and shall take effect immediately upon its passage by a vote of at least five (5) City Council Members. This urgency ordinance shall remain in effect for a period of six (6) months, unless earlier repealed or extended by the City Council.

Section 5: If any section, subsection, sentence, clause or phrase of this urgency ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this urgency ordinance. The City Council hereby declares that it would have passed this urgency ordinance, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one (1) or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Section 6: The City Council finds the approval of this urgency ordinance is not subject to the California Environmental Quality Act (“CEQA”) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. Alternatively, the City Council finds the approval of

this urgency ordinance is not a project under CEQA Regulation Section 15061(b)(3) because it has no potential for causing a significant effect on the environment.

Section 7: The Mayor shall sign and the City Clerk shall attest to the passage of this urgency ordinance. The City Clerk shall cause this urgency ordinance, or a summary thereof, to be published pursuant to Charter Section 414.

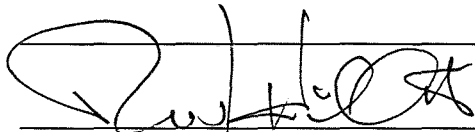
This urgency ordinance was introduced and adopted at a regular meeting of the City Council of the City of Newport Beach, held on the 24th day of June, 2014, by the following vote, to wit:

AYES, COUNCILMEMBERS Gardner, Petros, Curry,

Henn, Daigle, Selich, Mayor Hill

NOES, COUNCILMEMBERS None

ABSENT COUNCILMEMBERS None



RUSH N. HILL, II, MAYOR

APPROVED AS TO FORM:

THE CITY ATTORNEY'S OFFICE

 (for)

AARON C. HARP, CITY ATTORNEY

ATTEST:



LEILANI I. BROWN, CITY CLERK



STATE OF CALIFORNIA }
COUNTY OF ORANGE }
CITY OF NEWPORT BEACH } ss.

I, Leilani I. Brown, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; that the foregoing ordinance, being Urgency Ordinance No. 2014-11 was adopted by the City Council of said City at a regular meeting of said Council, duly held on the 24th day of June, 2014, and that the same was so passed and adopted by the following vote, to wit:

AYES: Council Member Gardner, Council Member Petros, Council Member Curry,
 Council Member Henn, Council Member Daigle, Mayor Pro Tem Selich,
 Mayor Hill

NAYS: None

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 25th day of June, 2014.





City Clerk
City of Newport Beach, California

(Seal)

CERTIFICATE OF PUBLICATION

STATE OF CALIFORNIA }
COUNTY OF ORANGE }
CITY OF NEWPORT BEACH } ss.

I, LEILANI I. BROWN, City Clerk of the City of Newport Beach, California, do hereby certify that Urgency Ordinance No. 2014-11 has been duly and regularly published according to law and the order of the City Council of said City and that same was so published in *The Daily Pilot*, a daily newspaper of general circulation on the following dates:

Adopted Urgency Ordinance: June 28, 2014

In witness whereof, I have hereunto subscribed my name this _____ day of _____, 2014.

City Clerk
City of Newport Beach, California

(Seal)



